(2010) 08 KAR CK 0119

In the Karnataka High Court

Case No : MFA No. 944 of 1999

Mohammed Taher APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:
Land Acquisition Act, 1894 — Section 18 (1), 23, 4 (1), 6

Citation : (2011) 4 KCCR 2498

Hon'ble Judges : S.N. Satyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : B.M. Malkapur, for the Appellant; S.S. Kumman, HCGA, for the Respondent

Judgement

N.K. Patil, J.—Though this matter is posted in the admission list, with the consent of learned Counsel appearing for both the parties, this matter is taken up for final disposal, having regard to pendency of appeal from 1979 in LAC No. 20/1979. In the meanwhile, this matter was renumbered in the year 1999 and the acquisition took place in the year 1975.

2. This appeal arising out of the impugned judgment and Award dated 23.2.1988 passed in LAC No. 20/1979 on the file of Civil Judge at Bidar. The Reference Court by its impugned judgment and Award, awarded a sum of Rs. . 6,250/- per acre for irrigated land to an extent of 6 acres and Rs. . 3,500/- per acre for dry land to an extent of 16 acres 8 guntas in Sy. No. 45 of Chitguppa Village with consequential statutory benefits. The Appellant contending that, the quantum of compensation awarded in respect of irrigated land of 6 acres [3 acres sugarcane and 3 acres paddy grown out of 22 acres 8 guntas in Sy. No. 45 of Chitguppa Village] is inadequate and the same requires enhancement, presented this appeal. The Appellant has confined the enhancement of compensation to Rs. . 10,000/- per acre in respect of irrigated land.

3. The brief facts of this case are:

Appellant claims that, he is the absolute owner of land in Sy. No. 45 of Chitguppa Village measuring 22 acres 8 guntas. Respondent-State Government through Assistant Commissioner, Bidar has acquired the land for public purpose viz. Construction of tank at Belkhera (Bund portion), in Humnabad Taluk, Bidar District vide preliminary notification u/s 4(1), the same was duly published in the Karnataka Gazette dated 30.10.1975, followed by a final notification u/s 6 of the Land Acquisition Act. The Land Acquisition Officer, after conducting an enquiry, after hearing the Appellant and after taking all the relevant materials available on record, has passed the award on 15.3.1978 by awarding compensation of Rs. . 1,000/- per acre for acquired land. In addition to that, he awarded Rs. . 11, 800/- towards Malkies on the land having a well, some Babool and neem trees. Being not satisfied with the award passed by the LAO, the Appellant has filed an application u/s 18(1) of the Land Acquisition Act, seeking reference for enhancement of compensation to the jurisdictional reference Court. The Jurisdictional Reference Court, after assessing the oral and documentary evidence and other materials available on the file, taking into consideration the potentiality of the land with reference to record of rights at Ex P5, by adopting capitalisation method, assessed an extent of 6 acres of irrigated land and 16 acres 8 guntas of dry land, by taking the yield of sugarcane as 10 quintals per acre and the yield of paddy as 8 quintals per acre, with reference to the price list issued by the jurisdictional APMC., Bidar, Reference Court has taken Rs. . 125/- per quintal of sugar cane and Rs. . 148/- per quintal of paddy and awarded a sum of Rs. . 6,250/- per acre to an extent of 6 acres of irrigated land and Rs. . 3,500/- per acre to an extent of 16 acres 8 guntas of dry land, with all statutory benefits as provided u/s 23 of the Land Acquisition Act. Being not satisfied with the impugned judgment and Award passed by the Reference Court, the Appellant felt necessitated to seek enhancement of compensation at the rate of Rs. . 10,000/-per acre by paying necessary Court fee.

4. Heard the learned Counsel appearing for the Appellant and the learned HCGA appearing for the Respondent at a considerable length of time.

5. After careful evaluation of the materials available on record with reference to record of rights at Ex P5, what emerges is that, out of 22 acres and 8 guntas, the Appellant cultivated sugarcane crop in 3 acres and paddy crop in 3 acres of irrigated land, which is not: in dispute. Remaining 16 acres 8 guntas of dry land has been irrigated through well by the Appellant. Record of rights established beyond reasonable doubt that, an extent of 6 acres of land is an irrigated land [out of 6 acres, in 3 acres sugarcane crops and in 3 acres paddy crops, were grown]. Reference Court has rightly taken the price of Sugarcane and paddy at the rate of Rs. . 125/- and Rs. . 148/- respectively on the basis of the price list furnished by the Agricultural Produce Market Committee, Bidar. It is the case of Appellant that, examining himself as PW. 1, states that, he is getting the yield of sugarcane at 25 to 35 quintals per acre and yield of paddy at 10 to 15 quintals per acre. But the learned Judge of Reference Court without assigning any valid reasons, only on the basis of presumptions and assumptions, referring to the

evidence of Appellant which shows 25 to 35 quintals of sugarcane per acre and 10 to 15 quintals of paddy per acre, which are exaggerated yield, assessed 10 to 12 quintals per acre of sugarcane and 6 to 8 quintals paddy per acre. Out of which. Reference Court takes the average i.e., 10 quintals per acre of sugarcane and 8 quintals per acre of paddy by tailing the price list, of sugarcane at Rs. . 125/- and paddy at Rs. .148/- respectively after deducting 50% towards cost of cultivation, determined the market value at the rate of Rs. . 6,250/- per acre to the irrigated land, to an extent of 6 acres and Rs. . 3.500/- per acre to the dry land to an extent of 16 acres and 8 guntas.

6. After evaluation of the entire original records available on the tile, after going through the reasoning given in paras-8 & 9 of the Judgment, the Reference Court has committed a grave error and miscarriage of justice in not determining the just and reasonable compensation. Taking into consideration the potentiality of the land and the nature of crops grown by the Appellant, which clearly shows that, he lost his valuable land under acquisition for the public purpose, we deem it fit to assess 15 quintals per acre of sugar cane and 12 quintals per acre of paddy and we accept the price at Rs. . 125/- per quintal of sugarcane and Rs. . 148/- per quintal of paddy.

7. In so far as Sugarcane is concerned, if we take 15 quintals as yield per acre at the price of Rs. . 125/-. an amount comes to Rs. . 1.875/-. Out of which 50% is to be deducted towards the cost of cultivation, the net income comes to Rs. . 937.50 paise per acre. The Reference Court rightly adopted the multiplier 10 to the net income. Then, the total market value comes to. Rs. . 9.375/-per acre.

8. In so far as Paddy is concerned, if we take 12 quintals as yield per acre at the price of Rs. . 148/-, the amount comes to Rs. . 1,776/-. Out of which 50% is to be deducted towards the cost of cultivation, the net income comes to Rs. . 888/- per acre. The Reference Court rightly adopted the multiplier 10 to the net income. Then, the total market value comes to Rs. . 8,880/- per acre.

9. We hold, the Appellant is entitled to a sum of Rs. . 28.125/- in respect of Sugarcane crop to an extent of 3 acres and a sum of Rs. . 26,640/- in respect of Paddy crop to an extent of 3 acres. Remaining 16 acres, 8 guntas of dry land is concerned, we award 50% average value of the Sugarcane as well as Paddy at the rate of Rs. . 4563.75 paise per acre.

10. For the foregoing reasons as stated above, we pass the following:

(i) the instant appeal filed by the Appellant is allowed in part;

(ii) The impugned judgment and Award is modified, holding that the Appellant is entitled to recover Rs. . 9,128/- per acre as compensation for 6 acres irrigated land and Rs. . 4.564/- per acre to an extent of 16 acres 8 guntas dry land in Sy. No. 45 of Chitguppa Village:

(iii) In addition to that, the Appellant is entitled to all the statutory benefits as provided u/s 23 of the Land Acquisition Act; and

(iv) Further, it is needless to say that, the Appellant is not entitled to any interest for a period of 1808 days delay in re-filing and filing the appeal.

11. With these observations, the instant appeal filed by the Appellant stands disposed of.